

Comments on HB 5727

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HB 5727 is one of several bills that were inspired by the Governor's Task Force on Elder Abuse. It expands the so-called Slayer Statute, section 2803 of the Estates and Protected Individuals Code, MCL § 700.2803, in a direction taken previously by several other states. The name of the statute reflects the public policy decision that a person who feloniously and intentionally kills a person should not profit financially from that person's death. The purpose of the bill, and the legislation already enacted in other states, is to expand the prohibition beyond homicide per se to abuse and exploitation. A person who abused or exploited the decedent to such a degree as to be convicted of a crime should not profit from the death, either. Why should an inheritance be taken away from a child whose physical abuse directly caused death and not taken away from another child who created just as much abuse, but the victim miraculously survived? I worked closely with the Governor's Task Force and was listed as Special Advisor in the final report. I am one of the people who suggested to the task force that the Slayer Statute should be expanded. I am certain that some section councils of the State Bar of Michigan will want to comment on this legislation, especially the Elder Law and Disability Rights Section Council and the Probate and Estate Planning Section Council. They have not yet formally reviewed the bill. I cannot say that they will agree with my analyses. It is certainly possible to some of them can point out other areas of concern that I have not recognized. I encourage the sponsors to work with these entities to strengthen the chance of passage of better legislation.

I support this bill strongly in principle, especially after the first substitute provisions were drafted. I composed these written remarks last night and it is certainly possible that the substitute language before us today is even better than the version I saw.

Under current Michigan law, if a person physically abuses his parent and the physical harm directly leads to death, the perpetrator is disinherited. However, if the abuse is just as severe but it cannot be proven that it was the cause of death, the abuser inherits from the victim. Although the situation is improving with death review teams in many parts of our state, a large number of elderly deaths are not investigated and are categorized as resulting from "natural causes", so many instances of death from physical abuse or neglect are never recognized.

There are three primary arguments for the Slayer Statute itself and for an expansion to include abuse and exploitation. The first argument is that public policy concerns deem that certain inheritances are unfair. If a person feloniously and intentionally kills a person, it seems unfair that the perpetrator can profit from the death. Likewise, both of the following scenarios seem unfair:

- A caretaker child severely abuses her mother physically, weakening her health and hastening her death, although the actual cause of death is pneumonia. It seems unfair that the abuser essentially arranged to speed up her inheritance.
- A bad son steals much of his mother's wealth during her lifetime. It seems

unfair that the good daughter has to divide what is left with her evil brother.

The second argument is that expansion of the Slayer Statute can act as a deterrent to abuse and exploitation. The idea is that if people realize that they jeopardize their expectations of an inheritance by engaging in abuse or exploitation, then they will be discouraged from engaging in such activities. For example, exploiting a small portion of a parent's wealth is less attractive if the result of being caught is losing a much larger inheritance.

The third argument is that this statute would increase pressure on law enforcement to investigate potential abuse and exploitation more thoroughly and for prosecutors to take action. All too often investigations stop when the victim dies or is near death. Pressure from relatives, if only because it is of benefit to them, could encourage these investigations to continue to see if there is a sufficient case for prosecution.

The substitute expands the forfeiture from affecting just abusers and exploiters of the elderly. That is a proper step. The elderly and persons with disabilities face dangers, but generally are not asking for special treatment, which could possibly insinuate that they are lesser members of society. I live just outside Williamston, the community where Ricky Holland lived. If he had somehow survived the horrible abuse but had died due to some unrelated malpractice at a hospital, it would not have been right for his abusive foster parents to have profited from a wrongful death claim. If a victim of domestic abuse dies of cancer before her divorce can be finalized, it does not seem right for the abuser to profit from her death.

I strongly support this bill in principle, but the last version I saw before preparing these written remarks still needs some improvement. For example, subsection (7) of 2803 should refer to a governing instrument, not just a will or codicil. Subsection (2) of 2803 cancels all revocable transfers in many other types of governing instruments, such as insurance policies, transfer on death bank accounts, and trusts. The exoneration provision should be equally as broad.

I suggest that the reference in 2802 (A) (v) to section 11 of the Social Welfare Act include neglect and exploitation, as the introduction indicates that it should. Subsection (C) needs to be modified a bit, also. No one is committed of a crime of violating section 11. Rather, the point seems to be to include crimes, where the criminal acts committed would be violations of section 11. For example, embezzlement and armed robbery are forms of exploitation and attempted murder is a form of abuse, although prosecutors would rarely include specific charges of exploitation or abuse when pursuing the more grievous charges.

There will need to be some provisions to address the forfeiture in probate court. Someone will have to take the responsibility of alerting the court about the conviction. It should not be the responsibility of the court to peruse old conviction records. Presumably, other beneficiaries who would see their inheritances enhanced would willingly accept that task. There could potentially be a controversy about whether a conviction really involved conduct that constitutes abuse, neglect, or abuse. To me right now the most efficient approach seems to be to create a rebuttable presumption that any conviction with the decedent as a victim is included under (C), but the alleged felon should have the opportunity of contesting that categorization. I see no reason to use a standard other than preponderance of the evidence.

I should note before finishing that the well-known Alan May wrote an article about a year ago detailing some general concerns about the Slayer Statute, which this bill neither ameliorates nor exaggerates. The committee may wish to consider his concerns at a later date.

Thank you for your concern about this important problem.